

## CHAPTER 65. PROHIBITION AGAINST LOBBYING FOR ECONOMIC CONSIDERATION AS A SANCTION

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65.1. Basis for prohibition against lobbying for economic consideration.

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65.2. Procedures for imposing prohibition against lobbying for economic consideration.

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**§ 65.1. Basis for prohibition against lobbying for economic consideration.**

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(a) Under section 1307-A of the act (relating to conflicts of interest) and section 1309-A of the act (relating to penalties), the Commission may prohibit a lobbyist from lobbying for economic consideration for up to 5 years when the lobbyist has done one or more of the following:

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(1) Violated Section 1307-A(d) of the act (relating to conflicts of interest).<sup>1</sup>

(2) Violated Section 1307-A(f) of the act (relating to unlawful acts).<sup>2</sup>

(b) Under section 1309-A of the act (relating to intentional violations), the Commission may prohibit a person from lobbying for economic consideration for up to 5 years when the person has done one or more of the following:

(1) Intentionally failed to register or report as required by the act (cross reference section 1309-A(e)(1) of the act).

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(2) As a registrant, filed a report under the act with knowledge that the report contained a false statement or was incomplete, (cross reference section 1309-A(e)(2) of the act).

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(3) Otherwise intentionally violated the act (cross reference section 1309-A(e)(3) of the act).

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(4) Failed to comply with section 1304-A, 1305-A or 1307-A of the act (relating to registration; reporting; and prohibited activities) after notice of noncompliance and after a hearing, if requested (cross reference section 1309-A(d) of the act).

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(c) For the limited purpose of the imposition of a prohibition against lobbying for economic consideration, the respondent shall be deemed to have been notified of noncompliance when served

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<sup>1</sup> See section 1307-A(d)(6)(ii) of the act.

<sup>2</sup> See section 1307-A(f)(2)(ii) of the act.

with both of the following:

(1) A findings report, notice of alleged noncompliance or other form of process which meets the requirements of section 1309-A(a) of the act.

(2) A Commission order or court order finding the respondent in noncompliance with, or in violation of, the act.

(d) For the limited purpose of the imposition of a prohibition against lobbying for economic consideration, the respondent shall be deemed to have failed to comply after notice of noncompliance if the respondent has not satisfied the requirements of the act within 30 days of the issuance of a Commission order or court order finding the respondent in noncompliance/violation, or within another time for compliance as specified by the order.

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(e) The prohibition against lobbying for economic consideration will not be imposed unless the defendant/respondent has been afforded the opportunity for a hearing as to whether the prohibition should be imposed.

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(f) At any time prior to a final determination by the Commission as to the imposition of a prohibition against lobbying for economic consideration, the Investigative Division of the Commission will have authority to negotiate settlements and to enter into settlement agreements to resolve matters under this Chapter, which settlement agreements will be subject to review and approval by the Commission. Such settlement agreements may include arrangements for deferral or termination of proceedings prior to any disposition, or terms for a disposition, including the duration of any prohibition against lobbying for economic consideration to be imposed under the act.

(g) The record of the underlying proceeding on violation/noncompliance, as well as relevant evidence of mitigating or aggravating factors, shall be admissible in a Commission proceeding involving the imposition of a prohibition against lobbying for economic consideration. The defendant/respondent may present argument regarding an appropriate penalty.

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Deleted: (1) A hearing, if requested, will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, Chapter 21 (relating to investigations). ¶

## **§ 65.2. Procedures for imposing prohibition against lobbying for economic consideration.**

(a) Giving consideration to the factors set forth in subsection (b)(14), the Commission, through its Executive Director, may institute proceedings to seek the imposition of a prohibition against lobbying for economic consideration.

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(b) The procedures for the imposition of a prohibition against lobbying for economic consideration will be as follows:

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(1) The proceedings will be initiated with the Commission through the filing of a petition by the

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Investigative Division, which petition will be served upon the respondent by the Investigative Division.

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(2) The petition will set forth the pertinent factual averments in numbered paragraph form, and will notify the respondent of the opportunity to file a written answer and to request a hearing in the matter. If the basis for the petition is the failure to comply with a Commission order, the petition will be docketed to the same number as the base case before the Commission. If the basis for the petition is the failure to comply with a court order, the petition will be docketed to the same number as the base case before the Commission if there was one, and if not, to a new number.

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(3) An answer to the petition shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(4) An answer to the Investigative Division's petition shall specifically admit or deny each of the averments made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

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(5) Failure to file an answer within the 30-day period or the filing of general denials shall be deemed an admission of the averments of the petition seeking the prohibition.

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(6) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition upon the respondent. The Commission will schedule a hearing no sooner than 30 days after the filing of an answer.

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(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing shall be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

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(7) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional seven days beyond the respondent's deadline in which to submit a written request for a hearing.

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(8) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(9) The Commission will give the respondent access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

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(10) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged or information not within paragraph (9).

(11) A hearing under this chapter will be public and be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(12) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs), to the extent applicable.

(13) After the opportunity for a hearing has been provided, and following the submission of briefs, the Commission will determine, based upon the record before it, whether and for how long a prohibition against lobbying for economic consideration is to be imposed against the respondent.

(i) If a lobbyist or person has been found to be in noncompliance or in violation of the act in a proceeding before the Commission, for which noncompliance or violation the penalty of prohibition against lobbying for economic consideration may be imposed, such finding of noncompliance or violation will be res judicata, and the Commission's further determination will be limited to the amount of time, if any, that the lobbyist or person shall be prohibited from lobbying for economic consideration.

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(ii) To the extent any factual matters remain to be proven, such will be proven by clear and convincing evidence.

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(iii) A prohibition against lobbying for economic consideration may only be imposed by a vote of at least four members of the Commission present at a meeting.

(14) In determining whether and for how long a prohibition against lobbying for economic consideration is to be imposed against a respondent, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the violation or failure to comply.

(ii) Whether the respondent has raised a justifiable excuse.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the requirements of the act.

(iv) Whether other proceedings have been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(v) Whether there are other factors that should be considered as aggravating or mitigating factors in the case.

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(15) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(16) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures set forth in § 21.29(b) and (d)–(f) (relating to finality; reconsideration), to the extent applicable.

(17) The official record of the case before the Commission, including any consent agreement, will be publicly available.<sup>3</sup>

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(18) The files of the Investigative Division will not be publicly available.

(c) If a lobbyist or person is convicted in a criminal proceeding for a violation of the act for which the penalty of prohibition against lobbying for economic consideration may be imposed, such conviction will be *res judicata*, and the Commission's determination will be limited to the amount of time, if any, that the lobbyist or person shall be prohibited from lobbying.

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<sup>3</sup> The Committee agreed that this language allows a defendant or respondent in one case to have access to records of previous cases, including any consent agreements.